

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Consolidated Builders &
Consultants, Inc.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on May 13, 2005, for a prehearing conference. The prehearing conference was held pursuant to a Notice of and Order for Hearing and Order for Prehearing Conference, dated April 1, 2005.

Christopher M. Kaisershot, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). The Respondent, Consolidated Builders & Consultants, Inc., no known address, did not appear in person or by counsel.^[1] There were no additional submissions following the Respondent's default on May 13, 2005.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101, telephone (651) 296-3528, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must

then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

STATEMENT OF ISSUES

1. By failing to satisfy the judgments obtained against it, did the Respondent engage in acts or practices that demonstrate it is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license granted by the Commissioner, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 326.91, subd. 1(6) (2004)?

2. Was the Respondent's conduct that was the basis for Building Contractor's Recovery Fund payments untrustworthy, financially irresponsible, or did the conduct demonstrate that Respondent was incompetent or unqualified to act under the license granted by the Commissioner, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), 326.91, subd. 1(10), and 326.975, subd. 1(b)?

3. By failing to respond and/or provide complete responses to the Department's Information Requests dated August 19, September 1 and 30, and November 15, 2004, and refusing to allow a reasonable inspection of records, did Respondent violate Minn. Stat. §§ 45.027, subds. 1a, and 7(a)(3), and 326.91, subd. 1(5)?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 11, 2005, a copy of the Notice of and Order for Hearing and Order for Prehearing Conference, Order to Show Cause, and Statement of Charges was delivered via first class mail to Consolidated Builders & Consultants, Inc., at three addresses: 14555 South Robert Trail, Rosemount, MN 55068, 12595 Dodd Boulevard, Rosemount, MN 55068, and P.O. Box 22221, Eagan, MN 55122-0221, as appears from an Affidavit of Mailing on file herein. All three copies were returned to the Department as undeliverable. The South Robert Trail address was the business address on file with the Department. The Dodd Road address was Mr. McGroaty's home address. Mr. McGroaty provided the Eagan post office box as an alternative address.

2. The Respondent did not appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and it did not request a continuance or any other relief. The Department was informed by Mark McGroaty, Respondent's qualifying person, that he intended to leave Minnesota.

3. The Notice of and Order for Hearing and Notice for Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the contested case hearing and/or prehearing conference may result in a finding that the Respondent is in

default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.

4. Because Respondent failed to appear, it is in default.

5. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing and Order for Prehearing Conference, Order to Show Cause and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50 (2000).

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. By failing to satisfy the judgments obtained against it, the Respondent engaged in acts or practices that demonstrate it is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 326.91, subd. 1(6) (2004).

7. The Respondent's conduct that was the basis for Building Contractor's Recovery Fund payments demonstrated that it was untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), 326.91, subd. 1(10), and 326.975, subd. 1(b).

8. By failing to respond and/or provide complete responses to the Department's Information Requests dated August 19, September 1 and 30, and

November 15, 2004, and refusing to allow a reasonable inspection of records, Respondent violated Minn. Stat. §§ 45.027, subds. 1a, and 7(a)(3), and 326.91, subd. 1(5).

9. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Commerce take adverse action against Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 18th day of May, 2005.

/s/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default (no tapes)

^[1] See Findings of Fact No. 1.